

No. 12104

United States
Court of Appeals
for the Ninth Circuit

BEN C. KOEPKE, Individually, and as Area
Rent Director, Los Angeles Defense-Rental
Area, Office of Rent Control, Office of the Housing
Expediter,

Appellant,

vs.

J. FONTECCHIO,

Appellee.

SUPPLEMENTAL
Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED

MAR 4 - 1949

PAUL R. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 8078-PH

J. FONTECCHIO,

Plaintiff,

vs.

BEN C. KOEPKE, Individually, and as Area Rent
Director, Los Angeles Defense-Rental Area, Of-
fice of Rent Control, Office of the Housing Ex-
pediter,

Defendant.

MOTION OF BEN C. KOEPKE, INDIVIDU-
ALLY, AND AS AREA RENT DIRECTOR,
LOS ANGELES DEFENSE-RENTAL AREA,
OFFICE OF THE HOUSING EXPEDITER,
TO DISMISS THE COMPLAINT

Defendant, Ben C. Koepke, individually, and as
Area Rent Director, Los Angeles Defense-Rental
Area, Office of Rent Control, Office of the Housing
Expediter, moves the Court to dismiss the above-
entitled cause for the following reasons:

1. This defendant, as Area Rent Director as
aforesaid, is a subordinate official subject to the
orders of his superior who is Tighe E. Woods, Hous-
ing Expediter, Office of the Housing Expediter, an
independent agency of the United States, as ap-
pears from the Complaint, and cannot be sued or

enjoined unless said Housing Expediter is properly made a party to the action.

2. That Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, is a necessary and indispensable party-defendant to this action, and no service has been obtained or can be obtained upon said Tighe E. Woods, since his official residence is in Washington, D. C. Therefore, this suit must be dismissed because there is no jurisdiction over said Tighe E. Woods as a necessary and indispensable party-defendant.

3. The within action is attempted to be maintained as a suit against the United States of America, which has not consented to be sued herein.

4. The Complaint herein fails to state a claim upon which relief can be granted.

/s/ ED DUPREE,

General Counsel.

HUGO V. PRUCHA,

Assistant General Counsel.

/s/ FRANCIS X. RILEY,

Special Litigation Attorney.

/s/ ABE I. LEVY,

Chief, Litigation Unit.

Attorneys for Defendant, Ben C. Koepke, Individually, and as Area Rent Director, Los Angeles Defense-Rental Area, Office of Rent Control, Office of the Housing Expediter.

[Endorsed]: Filed March 30, 1948. Paul P. O'Brien, Clerk.

[Endorsed]: No. 12104. United States Court of Appeals for the Ninth Circuit. Ben C. Koepke, Individually, and as Area Rent Director, Los Angeles Defense-Rental Area, Office of Rent Control, Office of the Housing Expediter, Appellant, vs. J. Fontecchio, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: February 8, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12104

BEN C. KOEPKE, Individually, and as Area
Rent Director, Los Angeles Defense-Rental
Area, Office of Rent Control, Office of the Hous-
ing Expediter,

Appellant,

vs.

J. FONTECCHIO,

Appellee.

STIPULATION TO SUPPLEMENT RECORD
ON APPEAL AND ORDER THEREON

It Is Hereby Stipulated and Agreed by and between the appellant, Ben C. Koepke, individually, and as Area Rent Director, Los Angeles Defense-Rental Area, Office of Rent Control, Office of the Housing Expediter, and the appellee J. Fontecchio, through their respective counsel, that the Record on Appeal in the above-entitled action shall be supplemented by the addition of the Motion of Ben C. Koepke, individually, and as Area Rent Director, Los Angeles Defense-Rental Area, Office of the Housing Expediter, to dismiss the Complaint, certified copy of said Motion to be presented to the

above-entitled court with the original of this Stipulation.

FRANCIS X. RILEY,
FRANK L. HIRST,

By /s/ FRANK L. HIRST,
Attorneys for Appellant.

BENT AND CLAPP,
By /s/ AUSTIN CLAPP,
Attorneys for Appellee.

Dated this 4th day of February, 1949.

The Court having considered the foregoing Stipulation and Good Cause Appearing Therefor, It Is Hereby Ordered that the Record on Appeal be supplemented by the addition of the Motion of Ben C. Koepke, individually, and as Area Rent Director, Los Angeles Defense-Rental Area, Office of the Housing Expediter, to dismiss the Complaint.

Dated this 8th day of February, 1949.

/s/ WILLIAM DENMAN,
/s/ CLIFTON MATHEWS,
/s/ WILLIAM HEALY,

Judges, United States Court of Appeals for the
Ninth Circuit

[Endorsed]: Filed February 8, 1949. Paul P.
O'Brien, Clerk.

